



Rep. Grant Wehrli

Filed: 4/20/2017

10000HB0418ham001

LRB100 04239 RPS 24815 a

1 AMENDMENT TO HOUSE BILL 418

2 AMENDMENT NO. _____. Amend House Bill 418 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by
5 changing Sections 3-109.1, 3-124.1, and 7-109 and by adding
6 Section 3-109.4 as follows:

7 (40 ILCS 5/3-109.1) (from Ch. 108 1/2, par. 3-109.1)

8 Sec. 3-109.1. Chief of police.

9 (a) Except as provided in subsection (a-5), beginning
10 ~~Beginning~~ January 1, 1990, any person who is employed as the
11 chief of police of a "participating municipality" as defined in
12 Section 7-106 of this Code, may elect to participate in the
13 Illinois Municipal Retirement Fund rather than in a fund
14 created under this Article 3. Except as provided in subsection
15 (b), this election shall be irrevocable, and shall be filed in
16 writing with the Board of the Illinois Municipal Retirement

1 Fund.

2 (a-5) On or after January 1, 2019, a person may not elect
3 to participate in the Illinois Municipal Retirement Fund with
4 respect to his or her employment as the chief of police of a
5 participating municipality, unless that person became a
6 participating employee in the Illinois Municipal Retirement
7 Fund before January 1, 2019.

8 (b) Until January 1, 1999, a chief of police who has
9 elected under this Section to participate in IMRF rather than a
10 fund created under this Article may elect to rescind that
11 election and transfer his or her participation to the police
12 pension fund established under this Article by the employing
13 municipality. The chief must notify the boards of trustees of
14 both funds in writing of his or her decision to rescind the
15 election and transfer participation. A chief of police who
16 transfers participation under this subsection (b) shall not be
17 deemed ineligible to participate in the police pension fund by
18 reason of having failed to apply within the 3-month period
19 specified in Section 3-106.

20 (Source: P.A. 90-460, eff. 8-17-97.)

21 (40 ILCS 5/3-109.4 new)

22 Sec. 3-109.4. Defined contribution plan for certain police
23 officers.

24 (a) Each municipality shall establish a defined
25 contribution plan that is a savings plan that aggregates police

1 officer and employer contributions in individual accounts that
2 are used for payouts after retirement. The defined contribution
3 plan established by the municipality must, at a minimum: meet
4 the safe harbor provisions of the Internal Revenue Code of
5 1986, as amended; be a qualified plan under the Internal
6 Revenue Code of 1986, as amended; and comply with all other
7 applicable laws, rules, and regulations. Employer
8 contributions shall vest immediately upon deposit in the police
9 officer's account.

10 A police officer who participates in the defined
11 contribution plan under this Section may not earn creditable
12 service or otherwise participate in the defined benefit plan,
13 except as an annuitant in another fund or as a survivor, while
14 he or she is a participant in the defined contribution plan.
15 The defined contribution plan under this Section shall not be
16 construed to be a pension, annuity, or other defined benefit
17 under this Code.

18 (b) If a police officer who has more than 10 years of
19 creditable service in a fund enters active service with a
20 different municipality, he or she may elect to participate in
21 the defined contribution plan under this Section in lieu of the
22 defined benefit plan.

23 A police officer who has elected under this subsection to
24 participate in the defined contribution plan may, in writing,
25 rescind that election in accordance with the rules of the
26 board. Any employer contributions, and the earnings thereon,

1 shall remain vested in the police officer's account. A police
2 officer who rescinds the election may begin participating in
3 the defined benefit plan on the first day of the month
4 following the rescission.

5 (c) As used in this Section, "defined benefit plan" means
6 the retirement plan available to police officers under this
7 Article who do not participate in the defined contribution plan
8 under this Section.

9 (40 ILCS 5/3-124.1) (from Ch. 108 1/2, par. 3-124.1)

10 Sec. 3-124.1. Re-entry into active service.

11 (a) If a police officer who is receiving pension payments
12 other than as provided in Section 3-109.3 re-enters active
13 service, pension payment shall be suspended while he or she is
14 in service. When he or she again retires, pension payments
15 shall be resumed. If the police officer remains in service
16 after re-entry for a period of less than 5 years, the pension
17 shall be the same as upon first retirement. If the officer's
18 service after re-entry is at least 5 years and the officer
19 makes the required contributions during the period of re-entry,
20 his or her pension shall be recomputed by taking into account
21 the additional period of service and salary.

22 (b) If a police officer who first becomes a member on or
23 after January 1, 2019 is receiving pension payments (other than
24 as provided in Section 3-109.3) and re-enters active service
25 with any municipality, that police officer shall continue to

1 receive pension payments while he or she is in active service,
2 but shall only participate in a defined contribution plan
3 established by the municipality pursuant to Section 3-109.4 and
4 may not establish creditable service in the pension fund
5 established by that municipality or have his or her pension
6 recomputed.

7 (Source: P.A. 91-939, eff. 2-1-01.)

8 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

9 Sec. 7-109. Employee.

10 (1) "Employee" means any person who:

11 (a) 1. Receives earnings as payment for the performance
12 of personal services or official duties out of the general
13 fund of a municipality, or out of any special fund or funds
14 controlled by a municipality, or by an instrumentality
15 thereof, or a participating instrumentality, including, in
16 counties, the fees or earnings of any county fee office;
17 and

18 2. Under the usual common law rules applicable in
19 determining the employer-employee relationship, has the
20 status of an employee with a municipality, or any
21 instrumentality thereof, or a participating
22 instrumentality, including aldermen, county supervisors
23 and other persons (excepting those employed as independent
24 contractors) who are paid compensation, fees, allowances
25 or other emolument for official duties, and, in counties,

1 the several county fee offices.

2 (b) Serves as a township treasurer appointed under the
3 School Code, as heretofore or hereafter amended, and who
4 receives for such services regular compensation as
5 distinguished from per diem compensation, and any regular
6 employee in the office of any township treasurer whether or
7 not his earnings are paid from the income of the permanent
8 township fund or from funds subject to distribution to the
9 several school districts and parts of school districts as
10 provided in the School Code, or from both such sources; or
11 is the chief executive officer, chief educational officer,
12 chief fiscal officer, or other employee of a Financial
13 Oversight Panel established pursuant to Article 1H of the
14 School Code, other than a superintendent or certified
15 school business official, except that such person shall not
16 be treated as an employee under this Section if that person
17 has negotiated with the Financial Oversight Panel, in
18 conjunction with the school district, a contractual
19 agreement for exclusion from this Section.

20 (c) Holds an elective office in a municipality,
21 instrumentality thereof or participating instrumentality.

22 (2) "Employee" does not include persons who:

23 (a) Are eligible for inclusion under any of the
24 following laws:

25 1. "An Act in relation to an Illinois State
26 Teachers' Pension and Retirement Fund", approved May

1 27, 1915, as amended;

2 2. Articles 15 and 16 of this Code.

3 However, such persons shall be included as employees to
4 the extent of earnings that are not eligible for inclusion
5 under the foregoing laws for services not of an
6 instructional nature of any kind.

7 However, any member of the armed forces who is employed
8 as a teacher of subjects in the Reserve Officers Training
9 Corps of any school and who is not certified under the law
10 governing the certification of teachers shall be included
11 as an employee.

12 (b) Are designated by the governing body of a
13 municipality in which a pension fund is required by law to
14 be established for policemen or firemen, respectively, as
15 performing police or fire protection duties, except that
16 when such persons are the heads of the police or fire
17 department and are not eligible to be included within any
18 such pension fund, they shall be included within this
19 Article; provided, that such persons shall not be excluded
20 to the extent of concurrent service and earnings not
21 designated as being for police or fire protection duties.
22 However, (i) any head of a police department who was a
23 participant under this Article immediately before October
24 1, 1977 and did not elect, under Section 3-109 of this Act,
25 to participate in a police pension fund shall be an
26 "employee", and (ii) any chief of police who became a

1 participating employee under this Article before January
2 1, 2019 and who elects to participate in this Fund under
3 Section 3-109.1 of this Code, regardless of whether such
4 person continues to be employed as chief of police or is
5 employed in some other rank or capacity within the police
6 department, shall be an employee under this Article for so
7 long as such person is employed to perform police duties by
8 a participating municipality and has not lawfully
9 rescinded that election.

10 (c) Are contributors to or eligible to contribute to a
11 Taft-Hartley pension plan to which the participating
12 municipality is required to contribute as the person's
13 employer based on earnings from the municipality. Nothing
14 in this paragraph shall affect service credit or creditable
15 service for any period of service prior to the effective
16 date of this amendatory Act of the 98th General Assembly,
17 and this paragraph shall not apply to individuals who are
18 participating in the Fund prior to the effective date of
19 this amendatory Act of the 98th General Assembly.

20 (d) Become an employee of any of the following
21 participating instrumentalities on or after the effective
22 date of this amendatory Act of the 99th General Assembly:
23 the Illinois Municipal League; the Illinois Association of
24 Park Districts; the Illinois Supervisors, County
25 Commissioners and Superintendents of Highways Association;
26 an association, or not-for-profit corporation, membership

1 in which is authorized under Section 85-15 of the Township
2 Code; the United Counties Council; or the Will County
3 Governmental League.

4 (3) All persons, including, without limitation, public
5 defenders and probation officers, who receive earnings from
6 general or special funds of a county for performance of
7 personal services or official duties within the territorial
8 limits of the county, are employees of the county (unless
9 excluded by subsection (2) of this Section) notwithstanding
10 that they may be appointed by and are subject to the direction
11 of a person or persons other than a county board or a county
12 officer. It is hereby established that an employer-employee
13 relationship under the usual common law rules exists between
14 such employees and the county paying their salaries by reason
15 of the fact that the county boards fix their rates of
16 compensation, appropriate funds for payment of their earnings
17 and otherwise exercise control over them. This finding and this
18 amendatory Act shall apply to all such employees from the date
19 of appointment whether such date is prior to or after the
20 effective date of this amendatory Act and is intended to
21 clarify existing law pertaining to their status as
22 participating employees in the Fund.

23 (Source: P.A. 98-712, eff. 7-16-14; 99-830, eff. 1-1-17.)

24 Section 90. The State Mandates Act is amended by adding
25 Section 8.41 as follows:

1 (30 ILCS 805/8.41 new)

2 Sec. 8.41. Exempt mandate. Notwithstanding Sections 6 and 8
3 of this Act, no reimbursement by the State is required for the
4 implementation of any mandate created by this amendatory Act of
5 the 100th General Assembly.

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.".